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CHARLES ELMORE GROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

No. 1048

IN THE MATTER OF

PAUL MOSER, DOING BUSINESS AS MOSER BUSINESS
COLLEGE,

BANKRUPT.

MAURICE KLEIN, TRUSTEE IN BANKRUPTCY,
Petitioner,

vs.

MARY K. MOSER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN
SUPPORT THEREOF.

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**PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT, AND BRIEF IN SUPPORT THEREOF.**

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioner, Maurice Klein, Trustee in Bankruptcy
of Paul Moser, Bankrupt, respectfully prays that the
Court direct a Writ of Certiorari be issued to review a
decision of the United States Circuit Court of Appeals
for the Seventh Circuit, and in support of said prayer
shows:

Statement of the Matter Involved.

That there is pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, a bankruptcy proceeding entitled "Paul Moser, doing business as Moser Business College, Bankrupt, No. 43 B 479," and that your petitioner is the duly appointed Trustee in Bankruptcy in said estate.

That the respondent, Mary K. Moser, filed her claim against said estate for unpaid installments under an agreement dated July 23, 1929, between respondent and said bankrupt, which said agreement was made, executed and delivered by the parties at Chicago, in the State of Illinois, and that said parties thereto were citizens of the State of Illinois; that said agreement set up that the said parties were married at Chicago, Illinois, on the 25th day of October, 1919, but had been living separate and apart from each other since on or about May 22, 1928, and that said agreement provided, among other things, the following preamble:

"WHEREAS, the Parties hereto are desirous of adjusting any and all rights of support, dower or inheritance, by reason of said marriage, and the Party of the Second Part is and has been fully advised as to the assets, liabilities and financial condition of the Party of the First Part, and is fully informed as to the amount of his income."

and, among other things, the following:

" * * * and further agrees that she will and does hereby release and discharge the Party of the First Part of and from any and all claim for support, maintenance or alimony, and solicitors' fees, temporary or permanent, by reason of said marriage, and each of the Parties does hereby mutually release to the other, any and all claim of award, dower, homestead, right of inheritance or of any benefit that now exists or which may hereafter exist under and by

virtue of the laws of the State of Illinois, by reason of the marriage of the Parties hereto and pertaining to property now owned or hereafter acquired by the Parties hereto, or either of them, * * *."

That objection to the allowance of respondent's claim was duly filed in said cause by your petitioner, the grounds of said objection being that the contract was against the public policy of the State of Illinois and was, and is, void and unenforceible.

That said claim of said respondent was allowed by the Referee against the estate of said bankrupt in the sum of \$3500.00.

Whereupon, your petitioner filed a petition for review from the order of said allowance and upon the hearing of said petition for review, said petition was, by the Judge of the District Court, for said District and Division, sustained, and the order of allowance of said claim by said Referee was overruled and vacated and that said claim was by said court disallowed and expunged from the records in said cause, on the ground that said contract was, and is, contrary to the public policy of the State of Illinois, and was, and is now, void and unenforceible. That the Circuit Court of Appeals reversed the order of the District Court on appeal from said order and denied the petition for rehearing, on the 20th day of December, 1944.

That subsequent to the making of said agreement, said Paul Moser brought suit for divorce against said respondent, in the Circuit Court of Cook County, Illinois, alleging desertion therein as grounds of said suit; said respondent was duly served with summons by the Sheriff of said County in said cause, and the Circuit Court found, upon hearing, that said respondent was personally served with summons and that respondent had wilfully deserted and absented herself from said complainant, Paul Moser,

without any reasonable cause on his part so to do. The said court decreed that the bonds of matrimony theretofore existing between said parties were dissolved. There was no award of alimony made by said court in said cause.

There are no disputed facts in the case. The various orders entered in said cause were based on the construction of the State law applicable to such contracts.

Reasons Relied on for Allowance of Writ.

1. That the contract upon which said claim is based is an Illinois contract, made, executed and delivered in the State of Illinois by Illinois parties, and that the construction of said contract is governed by the laws of the State of Illinois.
2. That the Supreme and Appellate Court of the State of Illinois have, by a long line of decisions, declared void and unenforceable, as against public policy of the State of Illinois, contracts between husband and wife, wherein, as a part of the consideration in said expressed contracts, the wife releases her husband from the duty of support.
3. That the considerations for contracts, such as is involved herein, are illegal.
4. That the Circuit Court of Appeals by its decision has decided an important question of local Illinois law contrary to the settled law of the State of Illinois:
5. That the opinion and judgment of the Circuit Court of Appeals is based upon an excerpt of the opinion of the Illinois Supreme Court, quoted in said opinion by the said Circuit Court of Appeals, from the case of *Van Koten v. Van Koten*, 323 Ill., at page 326 thereof, wherein the Illinois Supreme Court distinguished contracts between husband and wife as to their mutual property rights from cases such as the one at bar herein, wherein one of the

material provisions of the contract is that the husband shall be relieved of the obligation to support the wife. The Circuit Court of Appeals overlooked what immediately follows the quotation, by it cited, in *Van Koten v. Van Koten*, wherein the Illinois Supreme Court has said, on the lower part of page 326:

"Marriage is a civil contract to which there are three parties,—the husband, the wife and the State,—and it is regarded as a status based upon public necessity and controlled by law for the benefit of society at large. * * * One of the contractual obligations of the marriage contract is the duty of the husband to support the wife, and this contractual obligation cannot be abrogated without the consent of the third party,—the State. Husband and wife may contract with each other as to their mutual property rights, but the husband cannot by contract, either before or after marriage, relieve himself of the obligation imposed upon him by law to support his wife, and a contract between husband and wife one of the material provisions of which is that the husband shall be relieved of the obligation imposed upon him by law to support his wife is illegal and void as being contrary to public policy."

Prayer.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued under the seal of the Court, directed to the United States Circuit Court of Appeals, for the Seventh Judicial Circuit, commanding that said Court certify and transmit to this Court, on a day to be designated, a full and complete transcript of the record and proceeding of said Circuit Court of Appeals in said case, entitled on its docket "In the matter of Paul Moser, doing business as Moser Business College, Bankrupt—Mary K. Moser, Appellant, *vs.* Maurice Klein, Trustee in

Bankruptcy of Paul Moser, doing business as Moser Business College, No. 8514'', to the end that this cause may be reviewed and determined by this Honorable Court as provided by the statutes of the United States of America, and that said final order of said Circuit Court of Appeals be reversed or altered by this Honorable Court; and this petitioner also prays for such other, further and affirmative relief as may seem proper.

MAURICE KLEIN,
*Trustee in Bankruptcy of Paul
Moser, doing business as Moser
Business College, Petitioner.*

LOUIS COHEN,
DAVID JETZINGER,
Counsel for Petitioner.

